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No. 83-1751

In the Supreme Court of the United States

October Term, 1983

JOHN R. ROBINSON,
Petitioner,

vs.

THE STATE OF MISSISSIPPI,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Mississippi

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QUESTION PRESENTED

The Mississippi real property purchased by petitioner, a non-resident alien, should not escheat to the State of Mississippi for the reason that, under the authority of Article VI, Section 2, United States Constitution, Section 89-1-23 of the Mississippi Code of 1972 prohibiting certain non-resident aliens from owning property within the State of Mississippi must yield to treaties of the United States with a foreign country.

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INTRODUCTORY STATEMENT

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi entered on December 14, 1983, affirming without written opinion the decision of the state circuit court below entered on July 16, 1982, which held that the Mississippi real property owned by petitioner, a non-resident alien citizen of Canada, should escheat to the State of Mississippi as provided by Section 89-1-23, Mississippi Code of 1972.

OPINION BELOW

The Supreme Court of Mississippi entered its decision affirming the opinion of the lower court on December 14, 1983, without written opinion. A copy of the Order affirming the decision of the Circuit Court of Oktibbeha

County entered on the Minutes of the Mississippi Supreme Court, Minute Book BW, page 551, is attached hereto as Appendix "A." Petition for rehearing was denied on January 25, 1984, without opinion. A copy of the Order of the Supreme Court of Mississippi denying the Petition for Rehearing from Minute Book BW, page 593, is attached hereto as Appendix "C."

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1257(c).

CONSTITUTIONAL PROVISION INVOLVED

Art. VI. 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

TREATY PROVISIONS INVOLVED

Article V of the Convention Between the United States of America and the United Kingdom of Great Britain and Ireland, March 2, 1899, 31 Stat. 1939, TS 146:

In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the High Contracting Parties shall in the Dominions of the other enjoy the rights which are or may be accorded to the citizens or subjects of the most favored nation.

Article I, Supplementary Convention between the United States and Great Britain, October 21, 1921, 42 Stat. 2147, TS 663:

The provisions of the Convention of March 2nd, 1899, shall become applicable to the Dominion of Canada upon ratification of the present Convention in the manner provided by Article II hereof.

Article IX, Treaty with Argentine Confederation, July 27, 1853, 10 Stat. 1005, TS 4:

In whatever relates to the police of the ports, the lading and unlading of ships, the safety of the merchandise, goods, and effects, and to the acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament, or in any other manner whatsoever, as also to the administration of justice, the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights as native citizens; and they shall not be charged in any of those respects, with any higher imposts or duties than those which are paid, or may be paid, by native citizens—submitting, of course, to the local laws and regulations of each country respectively. If any citizen of either of the two contracting parties shall die without will or testament, in any of the territories of the other, the consul-general, or consul of the nation to which the deceased belonged, or the representative of such consul-general or consul, in his absence, shall have the right to intervene in the possession, administration, and judicial liquidation of the estate of the deceased, comformably with the laws of the country, for the benefit of the creditors and legal heirs.

STATUTES INVOLVED

Section 89-1-23, Mississippi Code of 1972:

Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may. Nonresident aliens shall not hereafter acquire or hold land, but a nonresident alien may have or take a lien on land to secure a debt, and at any sale thereof to enforce payment of the debt may purchase the same, and thereafter hold it, not longer than twenty years, with full power during said time to sell the land, in fee, to a citizen; or he may retain it by becoming a citizen within that time. All land held or acquired contrary to this section shall escheat to the state; but a title to real estate in the name of a citizen of the United States, or a person who has declared his intention of becoming a citizen, whether resident or nonresident, if he be a purchaser or holder, shall not be forfeited or escheated by reason of the alienage of any former owner or other person.

Any person who was or is a citizen of the United States and became or becomes an alien by reason of marriage to a citizen of a foreign country, may hereafter inherit, or if he or she heretofore inherited or acquired or hereafter inherits, may hold, own, transmit by descent or transfer land free from any escheat to the State of Mississippi, if said land has not heretofore escheated by final valid order or decree of a court of competent jurisdiction.

Nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi.

STATEMENT OF THE CASE

Petitioner is a non-resident alien and a citizen of Canada who purchased a house and approximately 45.02 acres of property in Oktibbeha County, Mississippi on June 8, 1981. The State of Mississippi, through the District Attorney of Oktibbeha County, instituted Quo Warranto proceedings on September 23, 1981. In his answer Petitioner pled the following affirmative defense:

> The defendant would show that he is a citizen of Canada. The defendant would show that the provisions of Section 89-1-23, Mississippi Code of 1972, on which a Quo Warranto Information is filed herein, are void in that they are contrary to treaties between the United States of America and Canada. (R. 14-15)

A trial brief was prepared for the Trial Judge on this issue by Petitioner.

This case was tried before a Circuit Judge, without a jury, on March 10 and 11, 1982. At that proceeding all facts necessary to a determination of the issue raised before this Court in this Petition for Certiorari were stipulated by the parties: that the Petitioner was a non-resident alien of the State of Mississippi and citizen of Canada, that he had purchased, acquired and held the property in question. Also introduced as Exhibit Five by stipulation of the parties were certified copies of a treaty between the United States and Great Britain, signed at Washington, D. C. on March 2, 1899, and a supplementary treaty between the United States and Great Britain dated October 21, 1921, which treaties are reported at 31 Stat. 1939 and 42 Stat. 2147.

Comes now the State of Mississippi and the defendant by and through his attorney, Hon. Sam Wilkins,

and would stipulate that the defendant in this quo warranto proceeding, one John R. Robinson, is a non-resident alien of the State of Mississippi and of the United States, and is a Canadian citizen, and that this alien, John R. Robinson, is not within the jurisdiction of this Court, and further that John R. Robinson, a non-resident alien has purchased and acquired real property in the State of Mississippi, Oktibbeha County, as exhibited by a warranty deed on file and of record in the office of the Chancery Court of Oktibbeha County, Mississippi, . . .

. . . It is further stipulated that John R. Robinson did not acquire and hold the land described in Exhibit 4 by virtue of any inheritance or by any descent and distribution, and that he further did not acquire and hold the land described in Exhibit 4 by virtue of purchasing said land for the enforcement of the payment of any debt or by virtue of any foreclosure of a mortgage or deed of trust.

It is further stipulated by the State and by the defendant by and through his attorney, that a duly certified treaty between the United States and Great Britain, and the United States and Canada, be introduced as evidence herein, said treaty bearing the certificate of the Secretary of State of the United States, and duly certificated according to the Acts of Congress. (R. 162-167)

On May 14, 1982, the Trial Court entered its opinion rejecting the argument of Petitioner.

[C]ounsel for the defendant argued that the United States and Great Britain entered into a treaty which contained a 'most favored nation' clause and that this clause means that the contracting countries grants to

> the other country the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. However, the Court finds that the said treaty does not authorize a non-resident Canadian citizen to hold and acquire real property in the United States in derogation of any state law. The Court finds that this treaty in no way affects the State's rights through its legislature to restrict the ownership of real property located within the state's boundaries. Specifically, title to real property is acquired, held, and passed according to the "lex rei sitae," and therefore the title of aliens to land within the boundaries of the several states is a matter of state regulation. (R. 779-780)

A copy of the entire opinion of the trial court is attached hereto as Appendix "B".

The sole issue raised on appeal of this cause to the Supreme Court of Mississippi, and on the Petition for Rehearing, is the issue now presented to this Court. The Mississippi Supreme Court issued no written opinion.

ARGUMENT

Acreage in Oktibbeha County, Mississippi, was purchased and held by Petitioner, a Canadian national, in contravention of Mississippi statutory law. Section 89-1-23, Mississippi Code of 1972, specifically provides that "non-resident aliens shall not hereafter acquire or hold land . . ." within the State of Mississippi, excepting only citizens of Syria and the Lebanese Republic. It is the position of Petitioner that this Mississippi statute is in conflict with and must yield to the treaties entered into between the United States and the United Kingdom, as this Court has established in *Zschernig v. Miller,* 389 U.S. 567, 88 S.Ct. 664 (1968).

Three treaties come into play in this case, as designated earlier in this Petition. Under these treaties, read together, a citizen of Canada is entitled, as a matter of United States national policy, to acquire and dispose of property of every kind in the same manner as would a United States citizen. Therefore, the land acquired by Petitioner is not properly the subject of a Quo Warranto proceeding by the State of Mississippi.

In 1899 the United States and the United Kingdom entered into a treaty "relating to the tenure and disposition of real and personal property" which contained a "most favored-nation" clause. (Article V, 31 Stat. 1939, TS 146) A 1921 supplemental treaty specifically made the 1899 treaty applicable to Canada. (Article I, 42 Stat. 2147, TS 663) By a "most-favored-nation" clause, each contracting country grants to the other contracting country the broadest rights and privileges which are accorded to any other nation in other treaties it has made or will make. Under a "most-favored-nation" clause, in this instance, a Canadian national would have the same rights regarding tenure and disposition of real and personal property as American citizens living in Mississippi. See *Kolovrat v. Oregon*, 366 U.S. 187, 6 L.Ed.2d 218, 81 S.Ct. 922 (1961).

Such favorable treatment was granted in 1853 when the United States and Argentina entered into a Treaty which specifically provides that the citizens of the two countries "shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens" in "the acquiring and disposing of property of every sort and denomination." Article IX, 10 Stat. 1005, TS 4. Under the "most-favored-nation" clause of the 1899 treaty between the United States and Great Britain, and the supplemental 1921 treaty, Canadian nationals are entitled to acquire and dispose of property to the same extent and in the same manner as

are Argentine citizens, who are treated, for these purposes, as are American citizens residing in the State of Mississippi.

The State of Mississippi has recognized in case law the priority of United States treaties over state law. In the case of *Guiseppe v. Cozzani,* 238 Miss. 273, 118 So.2d 189, 191 (1960), the Mississippi Supreme Court stated:

> Section 842, Miss. Code of 1942 [now §89-1-23, Mississippi Code of 1972], provides, among other things, that "non-resident aliens shall not hereafter acquire or hold land, * * *." However, every treaty made by the authority of the United States is superior to the constitution or laws of any individual state. If the law of a state is contrary to a treaty, it is void. This was so held in the case of *Hauenstein v. Lynham,* 100 U.S. 483, 25 L.Ed. 628.

The enactment of state laws which attempt to preempt the treaties of the United States is proscribed by Article VI, Section 2 of the United States Constitution and has been characterized as "state involvement in foreign affairs and international relations—matters which the Constitution entrusts solely to the Federal Government." *Zschernig v. Miller,* supra, 88 S.Ct. at 668. Yet, the Mississippi Supreme Court declined to recognize the priority of Federal treaties in this instance, giving no written opinion for its failure to act in accordance with Federal law and its own prior holding.

CONCLUSION

This Court should grant certiorari to consider the injustice done Petitioner by the institution of Quo Warranto proceedings in this instance. The State of Mississippi must recognize and yield to the treaties entered into by the United States and Great Britain, which grant to Canadian citizens the right to own real estate in the United States. These treaties preclude the action taken against this Petitioner. The Quo Warranto Information filed against the Petitioner should have been dismissed and held for naught.

Respectfully submitted,

JOHN R. ROBINSON, Petitioner
By /s/ SAMUEL H. WILKINS, ESQ.
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Jackson, Mississippi 39201
Tel. 601-354-0770
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Samuel H. Wilkins, Esq., attorney for Petitioner, hereby certify that I have this date served a true and correct copy of the foregoing Petition for Writ of Certiorari upon Counsel for Respondent, The Hon. Ed Pittman, Attorney General of the State of Mississippi, P.O. Box 220, Jackson, Mississippi 39205.

This 19th day of April, 1984.

/s/ SAMUEL H. WILKINS

APPENDIX "A"

551 MINUTE BOOK BW
MINUTES, SUPREME COURT OF MISSISSIPPI SEPTEMBER TERM, 198 3

LAWRENCE-GREENWOOD 1977

WEDNESDAY, DECEMBER 14, 1983 : : : : :

JOHN R. ROBINSON)
) This cause having been submitted at a former Term on the record herein
#54,324 v)
) from the Circuit Court of Oktibbeha County and this Court having suffi-
STATE OF MISSISSIPPI)

ficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 16th day of July, 1982, be and the same is hereby Affirmed. It is further ordered and adjudged that the appellant do pay all of the costs of this appeal to be taxed for which let proper process issue.

APPENDIX "B"

(Filed May 14, 1982)

No. 14,081

IN THE
CIRCUIT COURT OF OKTIBBEHA COUNTY,
MISSISSIPPI

STATE OF MISSISSIPPI,

vs.

JOHN R. ROBINSON,
Defendant.

OPINION OF THE COURT

The State of Mississippi by the filing of a Quo Warranto Information pursuant to Section 11-39-1, Mississippi Code Annotated, 1972, seeks to have the land purchased by one, John R. Robinson, in Oktibbeha County, Mississippi, escheated to the State. This proceeding was filed after a four to five month investigation of a large scale drug air smuggling operation by local, state and federal agencies which involved the purchase of the land in Oktibbeha County, Mississippi.

The Court had set several dates for the appearance and discovery of the defendant, John R. Robinson, and after the defendant had failed to appear on each occasion, except through his attorney, the Court set the case for trial. The defendant did not appear at the trial, but his attorney appeared and stipulated that the defendant was a Canadian citizen and was a non-resident alien as set out in the Quo Warranto filed by the State. However, counsel for the defendant argued that the United States and Great Britain entered into a treaty which contained a "most favored nation" clause and that this clause means

that the contracting countries grants to the other country the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. However, the Court finds that the said treaty does not authorize a non-resident Canadian citizen to hold and acquire real property in the United States in derogation of any state law. The Court finds that this treaty in no way affects the State's rights through its legislature to restrict the ownership of real property located within the states boundaries. Specifically, title to real property is acquired, held, and passed according to the "lex rei sitae", and therefore the title of aliens to land within the boundaries of the several states is a matter of state regulation.

In addition to this the evidence shows that the land was not purchased in good faith, but rather was purchased by a drug smuggling ring for the sole purpose of flying in illegal drugs. The land contained a landing strip and a house. False walls had been placed in the upstairs bedrooms where drugs could easily be hidden during any search of the premises. The evidence further showed that the purchase of this property was a central part of a large scale criminal conspiracy to violate the laws of the State of Mississippi and thus to injure the public welfare of the citizens of the State, and that the defendant, John R. Robinson, was a prime moving force behind this criminal conspiracy.

It is, therefore, the opinion of the Court that the land having been purchased by a non-resident alien and having been purchased in bad faith for the use of a drug smuggling operation; that the real property should escheat to the State of Mississippi; that the Sheriff of Oktibbeha County, Mississippi, as county escheator shall take the necessary and proper steps to escheat the land to the State of Mississippi.

APPENDIX "C"

MINUTES, SUPREME COURT OF MISSISSIPPI SEPTEMBER TERM, 198 3 MINUTE BOOK BW 503

LAWYERS-GREENWOOD 1977

WEDNESDAY, JANUARY 25, 1984, COURT SITTING : : : : :

JOHN R. ROBINSON)
) This cause this day came on to be heard on Petition for Rehearing and
#54,324 v)
) this Court having sufficiently examined and considered the same en banc
STATE OF MISSISSIPPI)
) and being of the opinion that the same should be Denied doth order that
)
) said Petition be and the same is hereby Denied.